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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 121

GABE PRESSMAN,
Petitioner,

vs.

THE CITY OF PLAINFIELD, NEW JERSEY, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
ORDINANCE INVOLVED	2
STATEMENT OF THE CASE	3
A. The Facts	3
B. The Proceedings	7
REASONS FOR GRANTING THE WRIT	10
PRELIMINARY STATEMENT	10
I—The Plainfield "opposing police or other officers" ordinance	13
A. The State Court construction of the Plainfield ordinance does not correct the unconstitutional vagueness and overbreadth of that ordinance	13
B. The approval of the Plainfield "opposing police or other public officers" ordinance by the New Jersey Superior Court below is in sharp conflict with subsequent and prior decisions of this Court and other federal courts	16
C. The Plainfield "opposing police or other public officers" ordinance is so inherently vague and overbroad that its interpretation and enforcement depends upon "moment to moment judgment of a policeman on his beat"	18
CONCLUSION	20

PAGE

APPENDIX:

A—Order of the Supreme Court of New Jersey Denying Petition for Certification 1a

B—Opinion of the Superior Court of New Jersey, Appellate Division 2a

C—Findings of De Novo Review in Union County Court 18a

D—Findings of Municipal Court of Plainfield 27a

Cases Cited

Cox v. Louisiana, 379 U. S. 536 (1965) 12

Curtis Publishing Co. v. Butts, 368 U. S. 130 (1967) 11

District of Columbia v. Little, 339 U. S. 1 (App. D. C. 1950) 15fn

Dowbrowski v. Pfister, 380 U. S. 479 (1965) 15

Garner v. Louisiana, 368 U. S. 157 ..... 19fn

Gregory v. City of Chicago, 37 U. S. L. W. 4213 (Mar. 10, 1969) 15, 16, 19

Herndon v. Lowry, 301 U. S. 242 (1937) 17

Keyishian v. Board of Regents, 385 U. S. 589 (1967) .. 12, 15

Kovack v. Maddux, 238 Fed. Supp. 835 (M. D. Tenn. 1965) 11

Lanzetta v. New Jersey, 306 U. S. 451 (1939) 16

N.A.A.C.P. v. Button, 371 U. S. 415 (1963) 15

Schneider v. New Jersey, 308 U. S. 148 (1939) 16

Shuttlesworth v. Birmingham, 382 U. S. 87 (1965) .. 14, 19fn

PAGE

State v. Furino, 85 N. J. Super. 345, 204 A. 2d 718 (App. Div. 1964) 13

State v. Smith, 46 N. J. 510, 218 A. 2d 147 13

Street v. New York, 37 U. S. L. W. 4321 (April 21, 1969) 15

Thompson v. City of Louisville, 362 U. S. 199 ..... 19fn

Wright v. Georgia, 373 U. S. 284 (1963) 16

United States Constitution Cited

First Amendment 2, 12, 14, 16, 17, 20

Fourteenth Amendment 2, 16

Statutes Cited

Model Penal Code:

Sec. 208.30 ..... 14fn

N.J.S.A. 2A:170-29 (Disorderly Persons Act) 13

New York State Penal Code:

Sec. 195.05 ..... 15fn

28 U.S.C.:

1257 (3) 2

Text Cited

108 U. Pa. L. Rev.:

388 ..... 15fn

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Petitioner Gabe Pressman respectfully prays that a writ of certiorari issue to review the judgment of the Appellate Division of the Superior Court of the State of New Jersey, finalized by denial of certification by the Supreme Court of New Jersey.

Opinions Below

The Supreme Court of New Jersey denied certification on December 16, 1968 without opinion (Appendix A). The opinion of the Appellate Division of the Superior Court affirming the judgment of the Union County Court

on October 31, 1968 is printed herein as Appendix B. The findings of the Union County Court, modifying the judgment of the Municipal Court of Plainfield, are printed herein as Appendix C. The findings of the Municipal Court of Plainfield, are printed herein as Appendix D.

Jurisdiction

The judgment of the Supreme Court of New Jersey, denying certification was entered on December 16, 1968. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257 (3).

See the Statement of the Case and the "Reasons", *infra*, for the facts as to how the federal questions are presented.

Questions Presented

1. Is the ordinance making it unlawful "to obstruct or hinder" a police officer violative of the First and Fourteenth Amendments on its face and as applied, (1) as abridging freedom of speech and the press, (2) as being void for vagueness, (3) as being contrary to substantive due process in point of unreasonable police regulation of conduct, and (4) as being contrary to procedural due process in point of arbitrarily subjecting persons to arrest and prosecution?
2. Did the courts below erroneously find the "constitutional facts"?

Ordinance Involved

PLAINFIELD MUNICIPAL ORDINANCE SECTION 10:4-5 "OPPOSING POLICE OR OTHER OFFICERS."

> It shall be unlawful knowingly and willfully to resist or oppose any police or other officer of this State, County or City when such officer is making

an arrest or serving any writ, bill, order or other process; *or intentionally to obstruct or hinder any such officer in the performance of his duty;* or to refuse or neglect to assist any such officer, when lawfully required to do so by him, in making an arrest, in the service of any process or in the suppression of a breach of the peace.

Statement of the Case

A. The Facts

During the period July 16, 1967 through July 19, 1967, the City of Plainfield, New Jersey was in the throes of severe civil disorder. State Police and National Guard Units had been called in to assist the municipal police forces.

On July 19, 1967, at approximately 3:52 P.M. Plainfield Police officers John Waldron and Robert Miller were on duty at the intersection of Watchung Avenue (running North and South) and East Fourth Street (running East and West). The city police station is located on the southeast corner of that intersection facing East Fourth Street, and a public parking lot is on the northeast corner, with its entrance on East Fourth Street opposite the police station. Officer Miller was standing near the center of the intersection; Officer Waldron, in the cross-walk area on Fourth Street. They had orders to maintain the traffic flow north and south on Watchung Avenue, but not to let any cars turn into East Fourth Street or block the intersection. The officers had been working unusually heavy shifts since Sunday, July 17; Officer Waldron was fatigued, unsettled by the conditions then prevailing, and upset by the tragic death of a brother officer during the disorder.

Beyond the northeast corner of the intersection, the Watchung Avenue curb is yellow to indicate a bus stop. There was a bus sign and another traffic sign in the bus zone, and cards reading "Emergency—No Parking—Police Department" had been attached to both signs. The press had been allowed to use the parking lot during the disorder. The uncontradicted testimony was that the petitioner's party had parked there earlier on the day in question.

The petitioner, a television news reporter, was in Plainfield, directing four other employees of his company, to cover the riots. The party was in two cars. At approximately 3:52 P.M. the defendant's party, driving north on Watchung Avenue, approached the southeast corner of the intersection and prepared to make a right turn into East Fourth Street as they had done earlier that day. The petitioner was hurrying to meet a news deadline. He was to meet a motorcycle courier in the parking lot on East Fourth Street at 4:00 P.M. The courier was to take a film to Linden, New Jersey, where a helicopter would carry it in turn to New York City, and a second courier would rush it to the television studio for the 6:00 P.M. news broadcast. Officer Miller stepped into their path and indicated the cars should proceed on Watchung Avenue. Both cars halted momentarily near the southeast corner on Watchung Avenue. Miller testified he told the driver they could park for a minute or so in the bus stop, while one of them delivered the film to the lot.

Accordingly, although the driver could not understand why he was denied permission to use the parking lot, the cars parked in the bus stop at the Watchung curbline near the northeast corner of the intersection.

As the cars pulled over to the curb, Miller called to Officer Waldron that the party had permission to stop there to drop off a package.

The ensuing sequence of events is in sharp dispute. The petitioner testified that he walked into the street toward Waldron in the East Fourth Street cross-walk. The petitioner explained his deadline: "We're from NBC. I have to meet a courier here at four o'clock. There's a helicopter waiting to take this film back to New York. What do you mean, we can't park here?" His inquiry referred to parking in the lot itself, where he could see news media vehicles parked at that very moment. Waldron then pointed the carbine he was carrying at the defendant. Flushed and angered by this hostile action, the petitioner responded: "Okay shoot me", whereupon Waldron put his arm on the petitioner and placed him under arrest.

According to Officer Waldron, both cars emptied completely and the occupants gathered in a group about fifteen feet from the corner. Waldron started towards the northeast corner. As he approached the curb and while Pressman was still with the group, some fifteen feet away, Waldron called out that if they wanted to drop something off, they could stop for a minute or so, but then they would have to move the cars further down Watchung Avenue beyond the railroad tracks. Two of the group turned towards the automobiles. Although he could not identify them, Waldron presumed they were the drivers preparing to move their respective vehicles.

Waldron testified that the petitioner told the men: "Wait a minute, don't move the cars," and that the men turned back to the group. Thereafter, he and the petitioner confronted each other at the northeast corner. The petitioner said: "Don't you know, we're the press? Why can't we park here? We should be allowed to park here. We have to park our car some place." Waldron replied it did not matter who they were; they could not park there; although they could drop something off, they had only a minute to do that.

Despite the fact that the petitioner was wearing a conspicuous red laminated press pass from the New York City Police Department on his jacket, Waldron claimed that until then he had not known the group were newsmen. Officer Waldron testified he did not see the pass even when he was within inches of the petitioner, although Officer Miller testified he was able to make out the parties' status as newsmen from their passes while they were still in the car.

At that point, according to Waldron, the petitioner said: "In fact we are not going to move them so what are you going to do?" Waldron replied he would have the cars moved. Then although Waldron denied ever pointing his rifle at him, the petitioner put his face a few inches from Waldron's and screamed: "What are you going to do to me, shoot me? Go ahead, shoot me, shoot me, shoot me." Waldron claims he then warned the petitioner he was in danger of being arrested, and the petitioner responded: "Who the hell do you think you are? Don't you know who I am?" Waldron then arrested him.

Stripped of all facts irrelevant to the elements of the offense charged, *and assuming the truth of the State's testimony,* the petitioner's allegedly criminal conduct is this:—Having been given permission by one policeman to park briefly in a curbside area prohibited to the general public, he sought to convince a second officer that special circumstances warranted allowing him to stop in a lot he had been using, or, at least, to remain an extra few minutes at the curb. In the meanwhile, he sought to delay the immediate movement of the cars under his command. This attempt constituted a fraction of the entire episode which, at most, took only a minute or two. For this, the petitioner stands convicted of intentionally hindering and obstructing a policeman in the discharge of his duties. Pe-

titioner knows of no case where an attempt to clarify a confused situation by discussion with a policeman has been deemed a crime.

By the utilization of Section 10:4-5 of the Plainfield Municipal Ordinances, a vague and overbroad criminal statute, the City of Plainfield defeated the exercise by petitioner of his rights under the First Amendment to the Constitution of the United States.

B. The Proceedings

The complaint was filed on July 19, 1967, in the Municipal Court of Plainfield, New Jersey, charging the petitioner with two counts of disorderly conduct in violation of Plainfield City Ordinances 10:4-3(a) and 10:4-5, to wit, offering to engage in a quarrel and intentionally hindering and obstructing an officer in the performance of his duties.*

After entering a not guilty plea to both counts, the petitioner was tried without a jury and on October 30, 1967, he was found guilty on both counts and fined $200. The findings by the Honorable Edwin D. Kunzman, Judge of the Municipal Court are reprinted herein as Appendix D. Conspicuously, Judge Kunzman made no finding whatso-

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* 10:43 "UNLAWFUL ACTS" (DISORDERLY CONDUCT)
It shall be unlawful for any person:
(a) to engage in or offer to engage in any quarrels, . . .

10:4-5 OPPOSING POLICE OR OTHER OFFICERS

It shall be unlawful knowingly and willfully to resist or oppose any police or other officer of this State, County, or City when such officer is making an arrest or serving any writ, bill, order or other process; or intentionally to obstruct or hinder any such officer in the performance of his duty; . . .

ever of any direction by Office Waldron to the drivers to move the cars, let alone a contrary direction to them by the petitioner. The only factual finding was that a brief argument lasting "a very short time, seconds . . ." had occurred between Waldron and the petitioner over whether the group could "stay where they were for the original stated purpose of delivering the film." For purposes of this finding, the Court concluded that the petitioner's version of what he had said to Waldron and the State's version were "not that far apart."

At a *de novo* review held in the Union County Court on January 8, 1968, the Honorable Jacob L. Triarsi made several findings of fact (reprinted herein as Appendix C). The Court found that Officer Miller had given the drivers permission to stop in the bus zone for one or two minutes to allow one of the occupants to make a delivery and that the petitioner "knew of the difficulty being encountered by his entourage." The Court additionally found that Officer Miller had called over to Officer Waldron that permission had been given to park at the bus stop. Most importantly, Judge Triarsi made a new finding, inconsistent with the Municipal Court below, that Officer Waldron had ordered the drivers to move the cars and that Pressman countermanded that order.

The Court went on to describe the ensuing confrontation between the petitioner and Officer Waldron and then stated the applicable law to be as follows:

> "To obstruct an officer according to Ballantine means to oppose or impede the process with which the officer is on or to defeat its excution, but that officer himself shall be obstructed and so was our case of Davis v. The State, 76 Georgia, 721. Words and phrases defines obstruct. It is the opposition to the officer that the word obstruct, resist or oppose have

> nearly the same meaning and the word oppose would cover the meaning of the words restrict or obstruct. They all mean the same thing, according to State v. Smith, 46 N. J. 510, State v. Furino, 85 Super. at 345, obstruct means to object to or come in the way of, to hinder from action, to impede. Words and phrases, again defines hinder to obstruct, that is to interpose obstacles or impediments, to hinder, to impede and the term does not necessarily imply applying of direct force or exercise direct meaning.
>
> *I conclude that under the total circumstances, that the frailities of man surfaced and the defendant displayed an aggressiveness that caused an intentional hindrance or obstruction with an officer during the performance of his duty. I am satisfied the State has proven the guilt of the defendant beyond a reasonable doubt and I find him guilty of that charge, that is intentionally obstructing and hindering of a police officer during the performance of his duty."*

Judge Triarsi did, however, find the petitioner *not guilty* of the charge of "offering to engage in a quarrel."

The Union County Court judgment was reviewed by the Appellate Division of the New Jersey Superior Court whose findings are reprinted herein as Appendix B. The majority and concurring opinions by the Appellate Division rested on substantially different grounds. The majority thought the alleged countermand would constitute the "obstructing and hindering by defendant of a police officer in the performance of his duties," since "the charge under that section specifically alleged a countermanding by defendant of Officer Waldron's order to the drivers of the two vehicles to move them."

In a concurring opinion, Judge Conford took pains to note that he agreed "with the courts conclusion of affirmance . . . but not on the basis of approval of any finding by the lower tribunals . . . that Officer Waldron commanded a departure of the vehicles from the bus stop forthwith and that the defendant expressly countermanded that order . . . Nevertheless, I am satisfied that defendant did hinder Waldron in the performance of his duties by embarking on a course of action which, in effect, constituted a contravention of the police order to remove the cars subject only to permission for a brief pause to permit a delivery of the film . . . In substance, accordingly, albeit by *indirection,* he nullified a police order that the vehicles be removed, and the charge in the complaint is essentially sustained."

Thus, the finding upon which Judge Conford based affirmance not only constitutes a substantial variance from the charge made against the petitioner, but also is inconsistent with the prior verdict of the Union County Court, that the defendant was not guilty of offering to engage in a quarrel with Officer Waldron. The Court also ruled that the challenged ordinance was constitutional on its face.

On December 16, 1968 the Supreme Court of New Jersey denied, without opinion, a petition for certification to review the judgment of the Appellate Division of the Superior Court. (Appendix A).

REASONS FOR GRANTING THE WRIT

Preliminary Statement

This case involves the primary responsibility of the Federal Courts for the protection of the First Amendment

rights of each citizen against unconstitutional encroachment by municipal government through overly broad and vague ordinances. The Appellate Division of the Superior Court of New Jersey erroneously held to be constitutional the City ordinance under which petitioner was convicted. That finding conflicts sharply with both prior and subsequent decisions of this Court. The ordinance is so broad and vague that it poses a constant threat to the legitimate exercise by citizens of the right to complain, criticize and question the acts of public officials.

Petitioner, in this case is a United States citizen who, while in the process of collecting the news for public dissemination, simply questioned the authority and logic of a police officer's command, thereby, allegedly impairing the working efficiency of the official to such a degree that he was deemed to have obstructed or hindered the officer in the performance of his duty.

The right of every individual to assert freely his legal rights and interests when accosted by the police, is of vital importance. There is a special importance in asserting such rights, however, when there is even a remote risk that police action might inhibit or discourage the full and free discharge of the press function.

The importance of a press free from harassment and intimidation, as well as from outright control, need not be labored. *Curtis Publishing Co.* v. *Butts,* 368 U. S. 130, 149 (1967).

The right of free press extends beyond mere news collection; it comprehends the right, not only to uncover the news, but also to relay it to the centers of publication and broadcasting for dissemination to the public. *Kovack* v. *Maddux,* 238 Fed. Supp. 835, 836 (M. D. Tenn, 1965).

Efforts to collect and transmit the news, particularly where the police are likely to be giving directions to the general public, can all too easily be throttled under the guise of a "hindrance and obstruction" ordinance similar to the Plainfield "Opposing Police" ordinance.

If newsmen can be deterred from pressing their attempts to gain access or to convey their reports when they merely seek to explain their purpose, the opportunity for arbitrary exclusion is obvious.

It is imperative that the Court exercise its primary responsibility to protect primary Constitutional rights by reviewing the legitimacy of an ordinance that may punish for unspecified degrees of verbal mis-conduct. As Justice Brennan said for the Court in *Keyishian* v. *Board of Regents,* 385 U. S. 589, 603-604 (1967):

> "We emphasize once again that 'precision of regulation must be the touchstone in an area so closely touching our most precious freedoms,' *N.A.A.C.P.* v. *Buttons,* 371 U. S. 415, 438; 'for standards of permissible statutory vagueness are strict in the area of free expression . . . because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specifity.' Id., at 431-433."

The factual finding by the Court below is not clear from the opinion which itself is inconsistent.* As this Court said in *Cox* v. *Louisiana,* 379 U. S. 536, 545 (1965), the Supreme Court has a duty, where constitutionally protected rights are involved, to make an independent examination of the factual issues to insure that "distorted fact finding" by lower courts does not undermine effective protection by the Federal Courts of society's interest in a vital First Amendment.

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* Appendix B, concurring opinion of Judge Conford.

I.

The Plainfield "opposing police or other officers" ordinance.

A. The State Court construction of the Plainfield ordinance does not correct the unconstitutional vagueness and overbreadth of that ordinance.

Section 10:4-5 of the Plainfield Municipal Ordinances makes it unlawful to:

> "(K)nowingly and wilfully to oppose any Police officer . . . when such officer is making an arrest or serving any writ, bill, or other process: or intentionally to obstruct or hinder any such officer in the performance of his duty . . ."

New Jersey Courts have construed similar language in the State Disorderly Persons Act N.J.S.A. 2A:170-29, treating the terms "hinder" and "obstruct" as synonymous. *State* v. *Furino,* 85 N. J. Super. 345, 348, 204 A. 2d 718 (App. Div. 1964). The New Jersey Supreme Court, in *State* v. *Smith,* 46 N. J. 510, 218 A. 2d 147, elaborating upon *Furino* held that the obstruction need not be total but that some real impediment must occur, 218 A. 2d at 152. *Furino* involved physical assault upon State officials in order to prevent their inspection of the premises. In the *Smith* case the defendants physically blocked the entrance to a city counsel chamber during a public meeting and the Court held that this physical blockage constituted an obstruction even though the resulting impediment was not "complete and enduring." Both *Furino* and *Smith* were decided under the general Disorderly Persons Act (N.J.S. §2A:170-29), which covers hindrance, interference with or molestation of any person, and hence,

were not addressed to the historically rooted offense of obstructing or resisting an officer to which the Plainfield ordinance is limited. Thus, the state courts have not confined the focus of the Plainfield Ordinance to any particular actions or subject matter. In *Shuttlesworth* v. *Birmingham,* 382 U. S. 87 (1965) the Court approved an otherwise unconstitutionally drawn Birmingham loitering and failure to obey ordinance, where the state court interpretation confined the ordinance to a specified obstruction [physical obstruction impeding passage on sidewalks and streets]. There is no such narrowing construction of the Plainfield ordinance, and the Superior Courts' contention that "The First Amendment does not stand in the way of an imperative that there must be no intentional obstructing or hindering a police officer in the performance of his duty. Freedom of speech has its limitations",* is squarely in conflict with subsequent and prior holdings of this Court.

Petitioner contends that the State Courts have not constructed the ordinance so as to rescue it from being an overly broad catchall.** The phrase "to obstruct or hinder

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* Appendix B, Opinion of Appellate Division, Superior Court.

** Contemporary legislative treatment indicates attempts by various jurisdictions to define and circumscribe the types of activities included within vague and abstract "hindrance" and "obstruction" statutes. The Model Penal Code specifically excluded interference, which in itself is not otherwise defined as an unlawful act. Section 208.30, entitled "Obstructing Administration of Law or Other Governmental Function," provides:

"A person commits a misdemeanor if he purposely obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical

(Footnote continued on following page.)

any police officer in the performance of his duty" is too vague because it lacks precise standards and too broad because of the possible sweeping applications of this ordinance to otherwise legitimate conduct in the area of the First Amendment. *N.A.A.C.P.* v. *Button,* 371 U. S. 415, 432-433, 438 (1963); *Dowbrowski* v. *Pfister,* 380 U. S. 479, 487 (1965); *Keyishian* v. *Board of Regents,* 385 U. S. 589, 603-604 (1967); *Gregory* v. *City of Chicago,* 37 U. S. L. W. 4213, 4216 (Mar. 10, 1969) concurring opinion of Justice Black; *Street* v. *New York,* 37 U. S. L. W. 4321, 4325 (April 21, 1969).

(*Footnote continued from preceding page*)

> interference or obstacle, breach of official duty, or any other unlawful act, except that this section shall not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions."

Similarly the New York State Penal Code in Section 195.05 entitled "Obstructing Governmental Administration" provides:

> "A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act."

The requirement that the conduct which constitutes an obstruction of Governmental function be one of violence or physical interference or be independently unlawful is necessary in order to prevent Section 195.05 from being an overly broad catchall. (See, e.g., *District of Columbia* v. *Little,* App. D. C. 1950, 339 U. S. 1; 108 U. Pa. L. Rev. 388).

B. The approval of the Plainfield "opposing police or other public officers" ordinance by the New Jersey Superior Court below is in sharp conflict with subsequent and prior decisions of this Court and other federal courts.

Justice Black pointed out recently in his concurring opinion in *Gregory* v. *City of Chicago*, 37 U. S. L. W. 4213, 4214-4215 (Mar. 10, 1969):

> "[T]his Court has repeatedly warned states and governmental units that they cannot regulate conduct connected with these freedoms through use of sweeping, dragnet statutes that may, because of vagueness, jeopardize these freedoms. In those cases, however, we have been careful to point out that the Constitution does not bar enactment of laws regulating conduct, even though connected with speech, press, assembly, and petition, if such laws specifically bar only the conduct deemed obnoxious and are carefully and narrowly aimed at the forbidden conduct."

The Plainfield ordinance, as applied in this case, abridges the right of free speech and free press secured against state action by the First and Fourteenth Amendments, *Schneider* v. *New Jersey*, 308 U. S. 148, 160 (1939), and is void for vagueness. It is fatally vague, not in the sense that the ordinance on its face is so ambiguous a penal statute that it denies due process of law [*Lanzetta* v. *New Jersey*, 306 U. S. 451 (1939)] but for the distinct reason that, as construed and applied below, it encroaches upon constitutionally protected conduct by failing "to give adequate warning of the boundary between constitutionally permissible and constitutionally impermissible applications of the statute." *Wright* v. *Georgia*, 373 U. S. 284 (1963).

Statutes may intrude upon the exercise of First Amendment freedoms by overbroad applications, as well as by direct prohibition, because such freedoms are "delicate and vulnerable, as well as supremely precious in our society." *N.A.A.C.P.* v. *Button,* 371 U. S. 415, 433 (1963). The Court, acutely sensitive to this danger, noted in *Herndon* v. *Lowry,* 301 U. S. 242 (1937) that:

> "A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished, and such a statute's inclusion of prohibitions against expressions protected by the principles of the First Amendment, violates an accused's rights of procedural due process and freedom of speech or press."

A citizen ordered by a police officer to do or refrain from doing an act has many rights which can only be exercised if he can freely inquire and discuss his own position. The rights of free press, petition, association, and other aspects of individual liberty inherently include the derivative rights to assert these constitutional privileges and to question, within defined bounds, the legal basis of police action. In *Shuttlesworth* v. *Birmingham,* 382 U. S. 87 (1965), the Court approved a Birmingham ordinance which makes it criminal "to refuse or fail to comply with any lawful order, signal or direction of a police officer" after stating that "the literal terms of this ordinance are so broad as to involve constitutional doubts of the utmost gravity," only because the State Court of Appeals had confined the ordinance as being held to apply to vehicular traffic. Thus, the Birmingham law became clear, precise, and could not apply to protected First Amendment activity. But the Plainfield ordinance has no such narrowing characteristic or construction and should fall squarely within the Court's denunciation of such facial unconstitutional language. *Shuttlesworth, supra,* 382 at 93.

C. The Plainfield "opposing police or other public officers" ordinance is so inherently vague and overbroad that its interpretation and enforcement depends upon "moment to moment judgment of a policeman on his beat."

In pertinent part this "obstructing" and "hindering" ordinance is too vague because the dimensions of the terms "hinder" and "obstruct" remain completely obscure in the rest of the ordinance. It appears to be the clear intent of the ordinance that it is the police officer on the beat who, in his own discretion shall define the operative standards of application of the ordinance. In fact, the testimony supports this very point. At the hearing below, the crux of the States case was revealed when, after admitting that he was free to issue summons, or arrest the drivers of the cars, or take any other action to gain compliance with his order, the police officer (Waldron) admitted that only his efficiency was slightly impaired which he judged as constituting an "obstruction" or "hindrance"

> A. When he interferred was when he told the drivers not to move the cars. (Tr. 118a).
>
> * * *
>
> Q. Officer Waldron, if you wanted to issue a summons to the drivers of those cars and have those cars moved, was there anything that Mr. Pressman could have done to have prevented you from carrying out your orders?
>
> A. He *could* have made it much more difficult. This would be interfering. (Tr. 119a).

According to the police officer, the mere potential or possible *in futuro* hindrance occasioned by the alleged verbal countermand of his order, constituted a violation of the

Plainfield Ordinance, even though, admittedly, he could have, albeit with some claimed loss of efficiency, carried out his official duties.*

At anytime, a citizen seeking to utilize the fundamental right of free speech to maintain a temporary status quo in order to explain his position to an officer seeking to take action against him, may come into conflict with an individual policeman's construction of the ordinance. Neither the citizen nor the policeman have any way of knowing from the *face* of the ordinance, or *any state construction* of the ordinance, whether a given verbal challenge or criticism or questioning of an officer's action actually falls within the ambit of the ordinance. The ordinance as construed, therefore, stands as both a danger to the unfettered exercise of protected rights, and the effective administration of the laws by government officials.

In *Gregory* v. *Chicago, supra,* 37 U. S. L. W. at 4215, 4216, Justice Black pointed out the danger of allowing to prevail the kind of situation which exists in this case:

> "[U]nder our democratic system of government, law making is not entrusted to the moment-to-moment judgment of the policeman on his beat. Laws, that is valid laws, are to be made by representatives chosen to make laws for the future, not by police officers whose duty is to enforce laws already enacted and to make arrests only for conduct already made criminal. One of our proudest boasts is that

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* The record contains no evidence whatever that police officer Waldron was actually impeded from discharging his lawful duty. It is, "a violation of due process to convict and punish a man without evidence of his guilt". *Thompson* v. *City of Louisville,* 362 U. S. 199; *Garner* v. *Louisiana,* 368 U. S. 157; *Shuttlesworth* v. *Birmingham,* 382 U. S. 87.

> no man can be convicted of crime for conduct, innocent when engaged in, that is later made criminal. . . . To let a policeman's command become equivalent to a criminal statute comes dangerously near making our government one of men rather than of law. See Cox v. Louisiana, 379 U. S. 559, 579 (1965) (concurring opinion)."

Petitioner contends that the Plainfield "Opposing Police or Other Public Officers" ordinance, as construed, is in direct conflict with the established principles of this Court and it is therefore, imperative that the Court exercise its review power so that it may maintain the vitality of its so-often announced principle that criminal laws must be sufficiently clear and narrow so as not to infringe on the critical exercise of protected First Amendment rights.

CONCLUSION

Petitioner respectfully prays that the petition for the writ of certiorari in the above subject matter be granted.

Respectfully submitted,

STANLEY J. REIBEN
Counsel for Petitioner,
37 Wall Street
New York, New York 10005

APPENDIX A

Order of the Supreme Court of New Jersey Denying Petition for Certification

(Filed—December 16, 1968.)

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 16th day of December, 1968.

JOHN A. GILDEN
Clerk of the Supreme Court

APPENDIX B

Opinion of the Superior Court of New Jersey, Appellate Division

Argued October 14, 1968—Decided Oct. 31, 1968.

Before Judges Conford, Kilkenny and Leonard.

On appeal from Union County Court, Law Division.

Mr. Raymond L. Falls, Jr., of the New York bar argued the cause for appellant, *pro hac vice (Messrs. Abrams, Kestenbaum, Henricks and Reina,* attorneys).

Mr. Edward Sachar argued the cause for respondent (*Mr. Daniel Stoler Bernstein,* on the brief).

The opinion of the court was delivered by
KILKENNY, J.A.D.

Defendant was found guilty in Plainfield Municipal Court of violating sections 10:4-3(a) and 10:4-5 of the city ordinance. He was fined $100 for each violation and costs of $10 were imposed.

The essence of the complaint under section 10:4-3(a) was that defendant, on July 19, 1967, offered to engage in a quarrel with John Waldron, a police officer of Plainfield, by loud, abusive and profane language. The gist of the charge under section 10:4-5 was that, on the same date, defendant

> "Did intentionally obstruct or hinder the said officer in the performance of his duty by ordering the operators of 2 motor vehicles not to remove their M.V. from a prohibited parking area, after

> the said police officer ordered the said vehicles to be removed from said prohibited parking area."

Defendant appealed to the County Court where the matter was heard on the basis of the stenographic record of the municipal court trial and oral argument of counsel. The County Court found defendant not guilty of violating section 10:4-3(a), but guilty of violating section 10:4-5. He was fined $100 as to the latter. Payment of the fine was stayed pending his appeal to this Court.

Section 10:4-5 of the ordinance provides in pertinent part, under the title "Opposing police or other officers":

> "It shall be unlawful * * * intentionally to obstruct or hinder any such officer in the performance of his duty; * * *."

I.

Defendant's first point is that no violation of section 10:4-5 was proved. He argues that the trial court's findings do not establish the essential elements of the offense. He asserts that the finding by the County Court that defendant countermanded Officer Waldron's order was clearly mistaken and unwarranted by the evidence.

We wish to note at the outset the limited scope of our appellate review. We have the *power* to review the fact determinations of a trial court in all cases heard without a jury and to make new and amended findings. R.R. 1:5-4(b). In evaluating a contention made on appeal that the trial court erred in its determination of the facts, we must determine "whether the findings made could reasonably have been reached on sufficient credible evidence present in the record." *State* v. *Johnson*, 42 N. J. 146, 162

Appendix B

(1964). "When the reviewing court is satisfied that the findings and result meet this criterion, its task is complete and it should not disturb the result, even though it has the feeling it might have reached a different conclusion were it the trial tribunal." *Ibid.* "But if the appellate tribunal is thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction * * * then, and only then, it should appraise the record as if it were deciding the matter at inception and make its own findings and conclusions." *Ibid.* Our review has followed those guidelines.

Up until the confrontation between Officer Waldron and defendant, the facts are generally not in dispute.

We first note the factual background of the incident in question. In mid-July of 1967, there were serious civil disturbances in the City of Plainfield. On July 16th a Plainfield policeman was killed in the course of these disturbances. An emergency situation existed. The local police were being assisted by the State police and units of the National Guard. A house-to-house inspection was being conducted on July 19th in the so-called "target area" to locate guns that had been or might be used by persons in taking the law into their own hands. The police were working additional hours. Tenseness gripped the city. Television reporters and cameramen were on the scene to report and film the fast-moving events.

Officer Waldron had reported for duty about 1:30 P.M. on July 19th, after an 8-hour time off. Police headquarters were on East 4th Street just east of Watchung Avenue. It was a restricted area. There were fears that it might be a target for attack. Moreover, the police and

Appendix B

National Guard members were expected to return there with weapons located in their search. Waldron had received specific orders from his superior to station himself at the intersection of Watchung Avenue, which runs north and south, and East 4th Street, which runs east and west. He was to allow traffic to "flow" on Watchung Avenue, north and south, "allowing absolutely no cars whatever to turn east in front of police headquarters." No cars were allowed to be parked in any prohibited area.

About 3:52 P.M., Waldron was stationed in the easterly crosswalk along Watchung Avenue, about midway between the northeast and southeast corners. He thus acted as a human barrier to prevent cars turning east into East 4th Street.

Officer Waldron's testimony as to what ensued may be summarized as follows: While so-stationed in the crosswalk, Waldron saw two cars, one immediately in back of the other and proceeding north on Watchung Avenue, pull up to the southeast corner close to the curb and start to make a right-hand turn. He took a step over into the traffic lane, where they would need to turn, put his hands up, told them they could not move in there, pointed to the direction to go straight ahead "and waved them on." There were several people in each car. He heard someone in a car "holler," "We're the press. We want to go in there."

Officer Miller of the Plainfield police, who was also at the intersection and directing traffic from the middle of Watchung Avenue, walked over and told the driver of the first car, whose window was down, that it was "a restricted area, no cars were allowed to go into 4th Street, that he would have to move on." Someone in one of the cars

told Miller "they had something they wanted to drop off" and Miller told them they could stop *just for a minute* "to drop something off." Thereupon, the two cars proceeded northerly and stopped in the "Bus Stop" area at the northeast corner.

Instead of stopping for the proverbial "minute" to drop something off, all of the occupants of the two cars, including the two drivers—some five to eight persons—, disembarked and proceeded onto the sidewalk. Defendant was an occupant of one of the cars. This mass movement indicated to Waldron not a mere temporary stop for a moment "to drop something off," but a two-car parking in the bus stop, a prohibited area plainly marked with a "Bus Stop" sign, a yellow-painted curb and two other signs, reading "Emergency, No Parking, Police Department." This prompted Waldron to walk across the crosswalk toward the curb on the northeast corner. From a distance of about 15 feet, he testified that he said:

> "Fellows, you can't park these cars here. It's a restricted area. *If you want to drop something off, you've got about a minute to do it.* You've got to take these cars beyond the bridge and *park* them out here and then walk back." (Italics ours.)

We now come to the critical portion of Waldron's testimony. He testified that at this point defendant, who had gotten out of one of the cars, turned to the drivers and said:

> "Wait a minute. *Don't move them.*" (Emphasis added.)

According to Waldron, the drivers had already started to head for the cars when defendant made this statement.

Appendix B

Defendant proceeded to come to where Waldron was standing at the corner and allegedly said:

> "What do you mean, we can't *park* here? Don't you know we're the press?" (Emphasis added.)

Waldron stated that he replied:

> "It doesn't make any difference who you are. It's a restricted area and there's no cars allowed to *park* here. You can *stop for a second to drop something off*, which you had plenty of time to do. These cars have to be taken and *parked* beyond the railroad tracks, some place in that area and then you'll have to walk back." (Emphasis added.)

Perhaps the incident would have closed at this point if the cars had been moved, as the officer had directed. If something was to be dropped off—allegedly some film to be handed to a courier for flight to New York City to be used at 6 P.M. that evening—one of the occupants of the two cars could have disembarked and done so, thus avoiding the sequence of events. (Incidentally, there was no proof that the film was delivered to the courier that day). But defendant's zeal to do his job and the momentary frustration by a local policeman induced the following conduct and colloquy, according to Waldron:

> Defendant: "What are you going to do about it? In fact, we're not going to move them, so what are you going to do?
>
> Waldron: "If you don't move them, I'll have them removed.
>
> Defendant (pushing his face up into Waldron's face until he was only two or three inches away

from it): "What are you going to do to me? Shoot me, shoot me, shoot me."

Waldron, who was armed at the time and holding his carbine skyward, stated that he took a step backward and told defendant that, if he did not behave, he was going to be placed under arrest. Whereupon, according to Waldron, defendant said:

> "Who the hell do you think you are, sonny. Don't you know who I am? Don't you know who I am?"

Waldron did not then know that defendant was a television reporter of the news on N.B.C. He told defendant he was under arrest and led him to nearby police headquarters.

When questioned on cross-examination as to at what point defendant "obstructed, hindered or interfered with" his police duties, Waldron answered:

> "When the cars parked on the northeast corner of Watchung Avenue and East 4th Street, but on Watchung Avenue, after the drivers were told that they could not stay parked there, he [defendant] told the drivers to leave the cars there, not to move them. This is where he interfered with my orders."

If Waldron's testimony was credible, the countermanding by defendant of his order to the drivers to move the vehicles, in the manner and under the totality of the circumstances herein, would constitute an obstructing and hindering by defendant of a police officer in the performance of his duties. That would make him guilty of violating section 10:4-5 of the city ordinance, as both the municipal court and the county court found.

Appendix B

Officer Miller corroborated certain aspects of Waldron's version of the incident. He testified to being at the intersection at the time in issue when two vehicles traveling north on Watchung Avenue attempted to make a right turn into 4th Street. He saw Officer Waldron step out from the crosswalk where he was located, hold up his hand and stop these vehicles. Miller told them that no traffic was allowed on 4th Street, only emergency vehicles. In his words:

> "I advised these people, 'You cannot pull down 4th Street but you can stop in the bus stop *for one minute* if you have something to drop off." (Italics ours.)

He testified that one of the fellows in the car said, "We have to make a delivery of film." Thereupon, Miller replied:

> "Well, then, stop there *for one minute and have one fellow run out and deliver it,* but do not obstruct the intersection." (Italics ours.)

Miller testified further that when the vehicles pulled over into the prohibited area, Waldron started to walk over to these vehicles and he hollered to him, "John, I gave these people permission to stop there *just for a second* so they can pick up their film, run it in, and come right back out." (Emphasis ours.) Waldron nodded his head toward Miller as if he understood what Miller had said. Miller resumed his directing traffic until he heard someone shouting in "very loud" voice and in an abusive tone, "Go ahead, shoot me, shoot me." He turned around and saw that it was defendant, who was approximately 15 feet away. He also heard defendant say to

Waldron, "Who the hell do you think you are, sonny?" Miller confirmed that when defendant was waving his arms and "yelling," he "was about two to three inches from Officer Waldron's face as though he was just going to poke his face right at him." Waldron warned defendant, "If you keep it up, you're going to be under arrest." Then, Waldron placed defendant under arrest and assisted him to headquarters.

Defendant admitted being involved in the incident in issue, but he gave a version differing in some respects from the testimony of the police officers. He was in the second car driven by Joseph D. Viola. The car ahead, driven by James R. Gleason, had stopped as they approached the intersection. He saw a police officer apparently talking to Gleason and realized Gleason could not turn into the intersection to go to the parking lot, which they had left an hour and a half or so before. He signalled to go ahead, across the intersection and into the area on the right, on the northeast part of that intersection. He did not hear Gleason's conversation with the police officer. When the two cars stopped, he got out of the right front door and started walking along the sidewalk. He then observed Officer Waldron for the first time in the crosswalk.

Defendant testified that he walked some 20 to 25 feet after exiting from the vehicle to get to the northeast corner of the intersection and then proceeded four or five feet into the crosswalk where he initiated the discussion with Officer Waldron. He alleges that he told the officer:

> "We're from N.B.C. I have to meet a courier here at four o'clock. There's a helicopter waiting to take the film back to New York. *What do you mean we can't park here?*" (Emphasis added.)

He claims that he was referring to the parking lot, where other press vehicles had been parked. According to defendant, Waldron then "lowered his carbine and pointed it at me, and I was shocked and slightly frightened, bewildered, and I said, 'Okay, shoot me.'" Thereupon Waldron told him he was under arrest and began leading him down the street. He estimated the time lapse from when he left the vehicle to his first remark to Officer Waldron as about six to seven seconds; and from his first remark to his arrest as "at the most, twenty seconds."

Defendant denied that he specifically said, "Shoot me, shoot me, shoot me." He did not recall saying, "Who the hell do you think you are?" He asserted that he did not hear the officer direct the drivers of the two cars to move them. He denied that he countermanded or told the drivers not to move the cars. He admitted that he was "the captain of this team" and he was on a tight time schedule.

Defendant denied that Officer Waldron said, "Fellows, you can't park these cars here," referring to the bus stop. He did not remember the officer saying, "You've got to take these cars beyond the bridge and park them out there and walk back." He denied telling the drivers, "Wait a minute, don't move those cars." Despite this, defendant's initial question addressed to this officer was, "What do you mean we can't *park* here?"

Obviously, the resolution of the factual issues depended upon the assessment of the credibility of the several witnesses. It is clear from a reading of the record that the witnesses for the State, if believed, spelled out a case of violation of section 10:4-5 by defendant. Where their testimony varied from that of defendant and his witnesses,

"the superior advantage of the trial judge in seeing and hearing and appraising the disputants must ordinarily be regarded as the fulcrum on which the issue should be resolved." *Abeles* v. *Adams Engineering Co., Inc.*, 35 N. J. 411, 424 (1961).

By his finding defendant guilty of violating section 10:4-5, the magistrate resolved the issue of credibility in favor of the police officers and against the defendant. The charge under that section specifically alleged a countermanding by defendant of Officer Waldron's order to the drivers of the two vehicles to move them. The trial judge particularly noted the testimony of Officer Waldron that "he ordered the two vehicles to move on" and that an argument ensued between defendant and the officer, in which defendant stated, "What do you mean, we can't park here?" He concluded that "there was a hindrance."

Defendant argues that conviction under section 10:4-5 requires three essential elements: a physical impediment of the officer; a criminal intent to obstruct him substantially; and a threatened breach of the peace. We do not agree. We hold that defendant's conduct, under the existing circumstances, as testified to by the officers, was clearly an obstruction and hindering of the performance of the police officer's duty to keep traffic moving without interruption or unnecessary stoppage on Watchung Avenue. This was not simply a case of a citizen arguing with a policeman. It involved a deliberate altercation and challenge of the authority of a police officer to the end that the two cars would remain parked for a longer time than the short grace period to allow one of the occupants to drop something off.

Appendix B

II.

Defendant's next point is that the ordinance, as construed and applied, is unconstitutionally vague and encroaches upon the rights guaranteed by the First Amendment.

Section 10:4-5 is not unconstitutionally vague. Its language is clear as to the pertinent provision before us. Any reasonable person can understand the meaning of the words: "It shall be unlawful * * * intentionally to obstruct or hinder any such officer in the performance of his duty." We found a similar attack of "vagueness" without merit in *State* v. *Furino,* 85 N. J. Super. 345 (App. Div. 1964), where comparable language in N.J.S. 2A:170-29 was involved. We pointed out that to "obstruct" meant "to object or come in the way of; to hinder from action; to impede." (at p. 348) "No man of common intelligence would have to guess at the meaning of the statute, and the conduct condemned is certain." *Id.* at p. 349. So say we in the instant case. The Supreme Court approved our definition of "obstruct" in the *Furino* case, as including "hindering." *State* v. *Smith,* 46 N. J. 510, 520 (1966).

The First Amendment does not stand in the way of an imperative that there must be no intentional obstructing or hindering a police officer in the performance of his duty. Freedom of speech has its limitations.

Defendant relies upon *Thompson* v. *Louisville,* 362 U. S. 199 (1960). The only evidence of "disorderly conduct" in that case was the single statement of the policeman that after defendant was arrested he was "very argumentative." The only information in the record relating thereto was that defendant had asked the officers "what they

arrested me for." There was no testimony that Thompson "raised his voice, used offensive language, resisted the officers or engaged in any conduct of any kind likely in any way to adversely affect the good order and tranquility of the City of Louisville." 362 U. S., at p. 205. Obviously, under those facts, reversal of a conviction of disorderly conduct was proper. It may be assumed by us, as it was by the court in *Thompson* that "merely 'arguing' with a policeman is not, because it could not be, 'disorderly conduct.'" 362 U. S., at p. 206. (Emphasis added.)

But there is a big difference between "merely arguing" with a policeman and "obstructing" or "hindering" him in the performance of his duty. Under the first point, *supra,* we indicated the evidence supportive of the findings by the municipal and county courts that defendant's words and conduct had obstructed and hindered Officer Waldron in the performance of his police duty. This is not a case of "merely arguing" with a policeman.

III.

Defendant's final claim is that the trial court erred in refusing to strike the testimony of Patrolman Waldron upon the State's failure to produce his report of the incident.

Officer Waldron had filed a report of the incident at the police station but found no need to refer to it in the giving of his testimony. Somehow or other it was missing or lost and could not be located when defense counsel requested its production at the trial in the municipal court. There was no evidence that its being "lost" or "missing" was due to any wrongful conduct on the part

of anyone. Waldron testified that he looked for this report and inquired of the police clerk concerning it, but it could not be found. The magistrate denied defendant's motion to strike Waldron's testimony because of the inability of the State to produce the police officer's report. This motion was made at the close of the testimony.

Defendant now argues that R.R. 3:7-3A required a striking of the officer's testimony when there was a failure to supply the police report upon his request at the trial. The cited rule does not so provide under the facts herein. The court had not "ordered" the prosecuting attorney to produce the desired statement, as the rule requires; nor had the prosecuting attorney "elected" not to comply with an order of the court, a condition precedent under the rule to the preclusion of a State's witness from testifying. Additionally, R.R. 3:7-3A expressly relates to a statement in the "possession" of the prosecuting attorney. There was no such evidence here. The prosecuting attorney sought without success to locate the missing report. Defendant's attorney conceded that this was not a case of the prosecuting attorney "not complying," but rather that "he can't comply." Accordingly, R.R. 3:7-3A is not applicable.

Moreover, the sanction provided in that rule, where the prosecuting attorney "elects" not to comply with the court's "order" to produce the statement of a witness "in his possession," is that "the witness shall not be permitted to testify for the State." Here, Waldron had testified fully, on direct, cross, redirect, recross, and in rebuttal, both direct and cross. Defense counsel availed himself, at great length, of the opportunity to examine Waldron. It would be a perversion of justice to strike out the entire testimony of this principal and complain-

ing witness simply because his admittedly filed report could not be located merely by reason of someone's inadvertence.

We conclude that the refusal of the trial court to strike Waldron's testimony was proper and does not warrant a reversal.

The County Court judgment of conviction is affirmed.

Conford, S.J.A.D., concurring. Oct. 31, 1968

I agree with the court's conclusion of affirmance of the conviction of violation of section 10:4-5, *but not on the basis of approval of any finding by the lower tribunals (if there was any such finding) that Officer Waldron commanded a departure of the vehicles from the bus stop forthwith and that defendant expressly countermanded that order.*

Waldron's testimony, quoted in the court's opinion, is internally inconsistent with any fair inference that he issued such a command, and the cast of the proofs as a totality refutes such inference. Both officers had concededly instructed the drivers of the cars that they could park in the bus stop briefly to permit a delivery of the film. It is incredible that Waldron would, in one and the same breath, say to the drivers, (1) "You've go about a minute" to drop the film off and (2) that they should take the cars away instantly, park them "beyond the bridge" and then walk back to make the delivery. The two directions are patently inconsistent. If Waldron mentioned going beyond the bridge at all it was undoubtedly as an alternative direction if delivery of the film would take more than a minute or so.

Appendix B

Further, the entire context of the proofs, including those adduced by the independent witnesses, was that defendant did not tarry on the sidewalk at all after emerging from his car, but proceeded directly and at once to where Waldron was standing, off the northeast curb, and began his tirade at the officer. The physical situation evidenced by the proofs does not credibly support the concept of a 3-way confrontation between Waldron, the drivers and defendant, with the former telling the drivers to take the cars away *instanter*, the drivers turning around to do so, and defendant telling them not to, all of this prior to defendant's rapid walk to and confrontation with Waldron alone.

Nevertheless, I am satisfied that defendant did hinder Waldron in the performance of his duties by embarking on a course of action which, in effect, constituted a contravention of the police order to remove the cars subject only to permission for a brief pause to permit a delivery of the film. Clearly complying with defendant's directions, express or implied, no one in defendant's entourage undertook to deliver the film. Instead, the drivers emerged from and stood at or near their vehicles, thereby immobilizing them indefinitely, and defendant proceeded to launch his challenge of Waldron's authority to regulate the parking of the cars. ("What do you mean we can't park here?") The inevitable effect of this confrontation, whatever its potential outcome, was to keep the cars parked in the bus stop for longer than it would take to deliver the film and thereby to frustrate the performance of the officer's duty to keep all traffic moving. Defendant must be deemed so to have intended. In substance, accordingly, albeit by indirection, he nullified a police order that the vehicles be removed, and the charge in the complaint is essentially sustained.

I concur in the court's disposition of the other points of appeal raised by defendant.

APPENDIX C

Findings of *De Novo* Review in Union County Court

[January 8, 1969]

Before:

HONORABLE JACOB L. TRIARSI,
J.D.C. T./A.

* * * [T]he defendant herein has been charged with having been violative of ordinance 10:4-3a and 10:4-5 of the City of Plainfield on July 19, 1967. 10:4-3a provides that it shall be unlawful for any person to engage in or offer to engage in any quarrels, assaults, brawls, riots, gambling, prostitution or other disorderly conduct.

10:4-5 is headed opposing a police officer or other officer and provides that it shall be unlawful to intentionally obstruct or hinder any such officer in the performance of his duty.

The complaint herein as amended is somewhat more detailed and provides that the defendant did offer to engage in a quarrel with John Waldron, a police officer of the City of Plainfield by loud and abusive and profane language and telling the police officer to "shoot me, shoot me, shoot me" and by stating, "Who the hell do you think you are?" while at all times the said officer was wearing his police uniform and holding a carbine in his hand. That is offense 10.4-3a.

With respect to 10:4-5, the complaint provides, did intentionally obstruct or hinder the said officer in the performance of his duty by ordering the operators of two

motor vehicles not to remove their motor vehicles from a prohibited parking area after the said officers ordering the vehicles to be removed from said prohibited parking area.

There is no denying, and I find that on the 19th day of July of 1967, the City of Plainfield was gripped in the paws of riots that burned and plundered the section of the City of Plainfield and shocked and rocked the City of Plainfield as well as the State of New Jersey. The lawlessness was of such a calamitous magnitude that the Police Department of Plainfield together with some members of police departments of surrounding communities and a contingent of the State Police and responded to the Mayor's declaration of the existence of an emergency. These forces were not enough to cope with it and as a result the National Guard was called in to restore law and order.

These are findings of facts drawn from matters of common knowledge and from the testimony that was adduced during the course of the trial below. On July 19, 1967, at about three-fourty-five to three-fifty-two, p.m., there is no denying these facts, officers John Waldron and Robert Miller of the Plainfield Police Department were directing traffic at Watchung Avenue-East Fourth Street intersection, a short distance from the police station and a public parking lot located off East Fourth Street in Plainfield. Their orders were to maintain a constant flow of traffic north and south along Watchung Avenue and not to permit any cars to turn into East Fourth Street. Further, any traffic moving along Watchung Avenue on East Fourth Street was to be directed north and south on Watchung Avenue. All cars were to be kept moving.

Appendix C

No cars were to be permitted to be parked in restricted or prohibited areas or in front of police headquarters. The northeast corner of the intersection along Watchung Avenue was a bus stop. The curb was clearly marked, painted in yellow. There were two signs near the curb emblazoned bus stop. There were two signs, these two signs, had been covered with cards reading emergency, no parking police department: The cars had been attached to the bus stop signs by the local authorities sometime earlier. These were the prevailing conditions on the 19th of July at 3:45 to 3:52 p.m. Between 3:45 and 3:52 p.m., two cars, the first driven by James Gleason and containing the press and camera crew and the second, driven by Joseph Viola, wherein the defendant Gabe Pressman was a passenger. Traveling along Watchung Avenue approached the southeast corner of the intersection. When the first car approached the southeast corner, it started to make a right turn into east Fourth Street, when Officer Waldron stepped into its path and directed both vehicles to continue along Watchung Avenue. Both cars came to a stop near the curb of Watchung Avenue.

Officer Miller heard a voice from one of the cars, we are the press, we want to go in there. The record does not disclose the identity of the person who addressed this remark to the police. Officer Miller who was in the intersection then approached the cars. The said officer instructed the drivers to stop in the bus stop for a moment if a delivery was required or was to be made. It should be noted here that the defendant Pressman and his team were covering the riots. He had a deadline to meet. He expected a motorcycle courier to pick up film at about four p.m. and to be at the Linden Airport to meet a heli-

copter which would transport his film to the City of New York to meet his six o'clock New York deadline. Six o'clock being six p.m. deadline. While these instructions were issued, both drivers had their heads out of the car, the car door windows facing Officer Miller. While these instructions were directed at both vehicles, Officer Miller heard a voice from the second car inquire what is the trouble, officer. That was the Pressman car. The only passenger in that vehicle was the defendant Pressman. The driver Viola the fair inference is that this was the defendant's inquiry or the inquiry of his driver that he heard.

This fact is brought out only to establish that the defendant Pressman at that moment know of the difficulty being encountered by his entourage, to make a right-hand turn into East Fourth Street. This knowledge led him to signal Mr. Gleason to follow the verbal instructions of the police officer Miller and pull straight up Watchung Avenue across East Fourth Street. The cars in accordance with the no turn edict announced by Officer Miller proceeded across the intersection and stopped in the bus stop despite the emergency no parking ban, but with the permission of Officer Miller to make a stop. Officer Miller yelled to Officer Waldron that permission to stop was given and Officer Waldron acknowledged the same by nodding his head. These are all the facts gleaned from and gathered from the evidence in the record. The permission to stop, however, was for one or two minutes to allow one of the occupants to make a delivery. They had been notified of the prohibition against parking. The defendant was the first one out of either car. After he got out, all of the other occupants got out. Officer Waldron's testimony in this respect was corroborated by that

of two disinterested witnesses, Eugene Cambino and Clifford Smith. Officer Waldron stated that the motors were turned off. Credence of this testimony is bolstered by the fact or by the act of drivers in getting out of their vehicles. Certainly it is reasonable to infer that reasonable men when they leave their cars at the curb when they get out of their cars when they leave them empty at the curb, that they turned off their ignition. When the defendant stepped out of his car onto the sidewalk, Officer Waldron was in about the center of the East Fourth Street crosswalk, walking towards the Pressman entourage. The defendant Pressman walked fast towards Officer Waldron and admittedly initiated the discussion. Mark Beckerman was on the opposite side of the street walking abreast of the defendant and in the same direction as the defendant Pressman when he heard one of the officers say, "I'll give you two minutes to get those cars out of there." Officer Waldron stated that when all of the passengers disembarked, he waited for the drivers and ordered them to move and not park in the restricted zone. He stated that they started to move towards their cars when he saw Pressman turn and ordered his drivers leave them right where they are. "Don't move them." that was interference. That was molestation, that was hindrance; that was intentional obstruction and hindrance.

Then came confrontation. Four or five feet from the northeast corner in the East Fourth Street crosswalk, the initiation was by the defendant Gabe Pressman, "What do you mean we can't park here? What are you going to do about it? In fact we are not going to move them. So what are you going to do about it?" The officer described the defendant as being loud, excited and screaming. I believe he said very loud and hysterical. The de-

fendant admittedly initiated the discussion with the inquiry, "What do you mean we can't park here?", but explained he was not referring to the bus stop area but to a parking lot off East Fourth Street where other press vehicles had or were parked. This explanation in the light of the total circumstances is not impressive. He admitted that he was shocked, frightened and bewildered, but he attributed that to the claim that Officer Waldron had a carbine pointed at his stomach and to the subsequent arrest.

There is no doubt in the mind of this Court that the defendant was excited and under tremendous pressure. An order to get out of there in two minutes had been issued. He walked fast towards Officer Waldron. He had to meet a motorcycle courier in eight minutes at four p.m. That was scheduled to deliver film to a helicopter in Linden, eight or nine miles away, all to meet a six o'clock New York deadline. All these factors lead to the findings that he was excited and under intense pressure to get a story to his employer.

The Plainfield ordinance, 10:4-5, provides, in pertinent part provides, it shall be unlawful, knowingly and willfully to resist or oppose any officer, any police or other officer of this city or intentionally to obstruct or hinder any such officer in the performance of his duty. To obstruct an officer according to Ballantine means to oppose or impede the process with which the officer is on or to defeat its execution, but that officer himself shall be obstructed and so was our case Davis v. The State, 76 Georgia, 721. Words and phrases defines obstruct. It is the opposition to the officer that the word obstruct, resist or oppose have nearly the same meaning of the word

oppose would cover the meaning of the words resist or obstruct. They all mean the same thing, according to State v. Smith, 46 N. J. 510, State v. Furino, 85 Super. at 345, obstruct means to object to or come in the way of, to hinder from action, to impede. Words and phrases, again defines hinder to obstruct, that is to interpose obstacles or impediments, to hinder, to impede and the term does not necessarily imply applying of direct force or exercise direct meaning.

I conclude that under the total circumstances, that the frailties of man surfaced and the defendant displayed an aggressiveness that caused an intentional hindrance or obstruction with an officer during the performance of his duty. I am satisfied the State has proven the guilt of the defendant beyond a reasonable doubt and I find him guilty of that charge, that is intentionally obstructing and hindering of a police officer during the performance of his duty.

The charge to offer to quarrel as prohibited by the Plainfield Ordinance, however, is another matter. The testimony of officer Waldron and Officer Miller that makes the strongest case, for the State, appears on pages 27, 28 and 29 of the testimony. There Officer Waldron detailed the language that was used by this defendant. At page 109, 110, it appears, "Shoot me, shoot me, shoot me," was said very loudly and hysterically. At page 141, Officer Miller speaks of this language as having been heard by him and having been by the defendant very loud he said. I think the exact word was loud shouting. The alleged profane and offensive language is a remark, "Who the hell do you think you are sonny", which was addressed by the defendant to the officer, Officer Waldron. The

word hell today is regarded as a grave word. It is a somewhat hard or a harsh, a strong word, but it's seen more and more today in print and it's certainly used more often today than in the past on radio and also on television. Webster defines profane, to treat something sacred with abuse, either irreverence or contempt, desecrate, to violate, to debase by a wrong, unworthy or faulty use. Profanity, the quality or state of being profane, the use of profane language. Certainly the word hell as used and accepted today cannot be welded into or molded into Webster's Dictionary. The sentence, "Who the hell do you think you are sonny," was derisive, there is no questioning that. It was galling and it was impudent. There is no doubt about that. It was most certainly cause for the rise of a patrolman's blood pressure and temper under the total circumstances that excited, but it was not as offensive or as blood curdling as was that used in Ruttenbacker v. Bergenfield in 7 Misc. 969, where in that case the appellant was charged with disorderly conduct for using towards a police officer acting as a clerk of a magistrate's court, the following remark, "You big mutton head, do you think you are a czar round here?" Our Supreme Court in that case reversed a lower verdict of conviction by holding that while the dignity of a police officer may have been ruffled by language addressed to him, it was not indecent or disorderly. It dismissed the complaint, "It is not every trivial epitaph addressed by one to another, even a police officer that constitutes disorderly conduct." This same reasoning could be said, could be used for the particular sentence that was hurled at Officer Waldron. Here the charge is that he offered to quarrel. A quarrel as defined by Ballantine is the indulging by two or more men in an altercation, dis-

pute, brawl or angry contest. Viewing all that was said and assuming everything that allegedly was said, taking into consideration all of the testimony of all of the parties and assuming that everything that was allegedly said by all of the witnesses is true, it certainly cannot be said that the defendant offered to quarrel or indulge in an altercation, dispute of brawl or angry contest with the police officer. As I have previously stated, I say it was derisive, it was conducive under the circumstances to the creation of an unpleasant experience, but the worst that can be said is that he offered the officer an argument or rather that he argued with the officer. This of course is not contrary to law. The State has therefore failed to prove the defendant guilty of the charge offering to quarrel beyond a reasonable doubt and with respect to that particular charge, my verdict is not guilty.

* * *

[T]he intent, of course, as I see it, and I think it is in the record, could be that I missed up on that one particular sentence, but the intentional act on the part of the defendant was the countermanding or the attempting or the attempt on his part to countermand an officer's order. His acts, what he said, what he did during the course of the discussion is, as I think I pointed them out to you.

APPENDIX D

Findings of Municipal Court of Plainfield

[October 30, 1967]

Before:

HON. EDWIN D. KUNZMAN,
Judge

In this case which has taken so long of State versus Gabe Pressman, I would like to point out that, as Mr. Abrams knows from having appeared here many times, and Mr. Tozzi appears here whenever the court is in session, it is my practice in this court to give the defendant every leeway possible in order to provide for a fair and just trial. And thus we have gone into many areas which, in my opinion, probably do not have any relevancy. But I have permitted it from the standpoint of giving the defendant every opportunity that he might want in establishing his defense.

I am faced with the testimony, which I am not going to review in detail, of Officers Waldron and Miller concerning the charges which they brought against Mr. Pressman, dealing with violation of City Ordinances 10:4-3(a) and 10:4-5, which are basically intentionally obstructing or hindering an officer in the performance of his duty and offering to or engaging in a quarrel with an officer.

As part of this case, through Mr. Reiben, who has appeared here with the permission of the Court, certain constitutional questions have been raised as part of Mr. Reiben's statement on closing, in which he argues the vagueness and lack of standards in the ordinances.

Appendix D

Without an upper court decision ruling on this type of local ordinance dealing with engaging in a quarrel or offering or intentionally obstructing or hindering an officer, I am not going to pass upon the constitutional questions of the ordinances, but will take them as good for present purposes.

The argument on the right of the press and their obligation and duty to seek the news, I have no quarrel with, but as Mr. Reiben has stated, when it violates a criminal statute or quasi-criminal statute, as the case may be, then that is a different story.

In this case we have the testimony of Officer Waldron, in which he testified that he ordered the two vehicles to move on. An argument apparently ensued between Officer Waldron and Mr. Pressman, brief as it apparently was, as testified to by all parties. And it appears to me obvious that the argument arose out of whether or not these vehicles had the right to stay where they were, for the original stated purpose of delivering film.

I don't think that there can be any question but that an argument did ensue. This is testified to not only by Officer Waldron, but Officer Miller, who heard hollering and shouting and observed the waving of hands. There is the testimony of Mr. Pressman, who admits to being angry. According to Mr. Pressman, he stated, "What do you mean, we can't park here?" And referring to the carbine, "Okay, shoot me," which, although slightly different from what the officer testified to, is not that far apart from conversations as related by the State's witnesses.

As to the question of the timing involved, it appears from all the testimony that it was a very short time,

seconds, in which this confrontation between Mr. Pressman and Officer Waldron took place. Their position in the street was they were in the crosswalk or on the northeast corner or the southeast corner, because we have had testimony from both State and defense witnesses placing the parties all over that intersection.

The other items that were raised I do not believe, in my opinion, are crucial to this case. Time has passed, several months have gone by. At the time it was, as pointed out by Mr. Abrams, very tense and troubled times in the City of Plainfield, and I am sure that these items became hazy in everyone's mind.

But it boils down to whether or not there was an argument and there was a hindrance. I have come to the conclusion that there was.

There will be a finding of guilty with a $200 fine and $10 costs.

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In The

Supreme Court of the United States

October Term, 1969

No. 121

GABE PRESSMAN,

Petitioner,

vs.

THE CITY OF PLAINFIELD, NEW JERSEY, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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LUTZ APPELLATE PRINTERS, INC.

INDEX TO BRIEF

Page

Statement of the Case 1

Argument:

Point I. The within matter does not contain a substantial federal question, and the decision below is in accord with applicable decisions of this court. 7

Conclusion 13

Table of Citations

CASES CITED:

Cox v. Louisiana, 379 U.S. 536 (1965) . . . 9, 10

Gregory v. City of Chicago, 394 U.S. 111 (1969) 10

N.A.A.C.P. v. Button, 371 U.S. 415 (1963) . . 9

Shuttlesworth v. Birmingham, 382 U.S. 87 (1965) 9, 10

State v. Furino, 85 N.J. Super. 345, 204 A.2d 718 (App. Div. 1964) 8

State v. Smith, 46 N.J. 510, 218 A.2d 147 (1966) 7

Thompson v. Louisville, 362 U.S. 199 (1960) . . . 10

Wright v. Georgia, 373 U.S. 284 (1963) 10

Index

Page

STATUTE CITED:

R. S. 2A:170-29, N.J.S.A. 7

RULE CITED:

Supreme Court Rule 19, 28 U.S.C.A. 30 . . . 9

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Statement of the Case

The factual setting out of which this incident arose was well stated in the opinion of the Appellate Division of the New Jersey Superior Court:

In mid-July of 1967, there were serious civil disturbances in the City of Plainfield. On July 16th a Plainfield policeman was killed in the course of these disturbances. An emergency situation existed. The local police were being assisted by the State Police and units of the

National Guard. A house-to-house inspection was being conducted on July 19th in the so-called "target area" to locate guns that had been or might be used by persons in taking the law into their own hands. The police were working additional hours. Tenseness gripped the city. Television reporters and cameramen were on the scene to report and film the fast-moving events.

Police Officer John Waldron had reported for duty about 1:30 P.M. on July 19th, after an 8-hour time off. Police headquarters were on East 4th Street just east of Watchung Avenue. It was a restricted area. There were fears that it might be a target for attack. Moreover, the police and National Guard members were expected to return there with weapons located in their search. Waldron had received specific orders from his superior to station himself at the intersection of Watchung Avenue, which runs north and south, and East 4th Street, which runs east and west. He was to allow traffic to "flow" on Watchung Avenue, north and south, "allowing absolutely no cars whatever to turn east in front of police headquarters." No cars were allowed to be parked in any prohibited area.

About 3:52 P.M., Waldron was stationed in the easterly crosswalk along Watchung Avenue, about midway between the northeast and southeast corners. He thus acted as a human barrier to prevent cars turning east into East 4th Street.

Officer Waldron's testimony as to what ensued may be summarized as follows: While so-stationed in the crosswalk, Waldron saw two cars, one

immediately in back of the other and proceeding north on Watchung Avenue, pull up to the southeast corner close to the curb and start to make a right-hand turn. He took a step over into the traffic lane, where they would need to turn, put his hands up, told them they could not move in there, pointed to the direction to go straight ahead "and waved them on." There were several people in each car. He heard someone in a car "holler," "We're the press. We want to go in there."

Officer Miller of the Plainfield Police, who was also at the intersection and directing traffic from the middle of Watchung Avenue, walked over and told the driver of the first car, whose window was down, that it was "a restricted area, no cars were allowed to go into 4th Street, that he would have to move on." Someone in one of the cars told Miller "they had something they wanted to drop off" and Miller told them they could stop just for a minute "to drop something off." Thereupon, the two cars proceeded northerly and stopped in the "Bus Stop" area at the northeast corner.

Instead of stopping for a "minute" to drop something off, all of the occupants of the two cars, including the two drivers — some five to eight persons —, disembarked and proceeded onto the sidewalk. Petitioner was an occupant of one of the cars. This mass movement indicated to Waldron not a mere temporary stop for a moment "to drop something off," but a two-car parking in the bus stop, a prohibited area plainly marked with a "Bus Stop" sign, a yellow-painted curb and two other signs, reading "Emergency, No Parking, Police Department." This prompted Waldron to